

Wilson. And in coming to this conclusion, it appears to me very reasonable to allow some weight to the parol proof which establishes the fact that the ownership of such machinery is frequently in one person, while the building in which it is placed is the property of another; and that according to the received opinion of persons who use and deal with such property they are regarded as entirely separate, and as preserving the distinctive characteristics of real and personal estate. It is not that I understand the proof as establishing a usage which would control or change the general law in the place where the usage prevails, but as a fact which may be considered in connection with the other proof bearing upon the question. Such proof was not without its influence in *Vanderpool vs. Van Allen*, before referred to.

The opinion which I have formed with respect to the machinery made by the Savage Manufacturing Company, does not at all conflict with *Ex parte Cotton*, 2 *Montague, Deacon & De Gex*, 725. That case merely decides that trade-fixtures put upon premises which had been previously mortgaged by one of the partners, though erected by the firm subsequently formed, belonged, upon the bankruptcy of the firm, to the mortgagee as a part of his security, and did not pass to the assignees of the partners. It seemed to be supposed that fixtures added by the firm after the mortgage would not be regarded as constituting a part of the mortgaged premises, though it was conceded that the fixtures which were upon the premises at the time of the mortgage passed by the deed to the mortgagee. The Court, while repudiating any such distinction, and asserting the right of the mortgagee to all the trade-fixtures, whether erected prior or subsequently to the execution of the mortgage, go on to say: "Of course this will not include any articles which are movable. What articles are fixtures and what movables, is often a troublesome question of fact; and if the parties differ upon it in this case, there must be a reference and an inquiry on the subject."

If the articles made by the Savage Manufacturing Company were fixtures, the case of *Ex parte Cotton* would apply as it does